



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 21 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Expedited Settlement Offer Program for Storm Water (Construction)

FROM: John Peter Suarez, Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Water Management Division Directors
Regions I - X

Enforcement Division Directors
Regions II, VI, VIII

Regional Counsels
Regions I - X

This memorandum transmits the final framework for the Expedited Settlement Offer (ESO) Program for Storm Water. The joint regional and Office of Regulatory Enforcement staff workgroup developed: an ESO scope and procedure document; an inspection check-off sheet; a penalty calculation worksheet and a model ESO settlement agreement (attached) in an effort to have a consistent and uniform program throughout the country. I want to thank Regions I, III, IV, VI, VII, VIII and X for their active participation in the development of the ESO program for storm water. I also want to acknowledge the efforts of Regions III and VI in performing the field test of the program earlier this spring. This effort could not have been accomplished without the experience, knowledge and expertise of all of the workgroup members.

Storm water cases often involve facilities or sites where the cumulative effect of discharges can have significant environmental impact on a watershed. In storm water cases, issuing timely and consistent enforcement actions to compel compliance is necessary to achieve deterrence and insure timely correction of violations. An ESO provides "real time" enforcement in situations where violations can be corrected quickly and a penalty assessed within a short amount of time, generally a few months from EPA's discovery of the violation.

The purpose of expedited settlements is to supplement, not replace, the traditional administrative and judicial enforcement options. The program enables the regions to establish a credible and pervasive field presence. Traditional enforcement actions should be pursued for all violations where an expedited settlement is not adequate to address the level of non-compliance or the nature of the violator (*e.g.*, where there is a significant environmental harm, large economic benefit, repeat violator), or where the violator declines the offer for expedited settlement.

In order to ensure that the ESO is used appropriately, regions must consider the ESO criteria. Sites that meet all of the following criteria can be ESO-eligible: (1) construction sites up to 50 acres¹; (2) sites where the penalty calculated via the ESO worksheet is no more than \$15,000; (3) sites where there is no evidence of significant environmental impact (*e.g.*, turbidity observed in receiving water); (4) sites where the operator is a first-time violator; and (5) sites where there are no non-allowable storm water discharges (*e.g.*, a process wastewater discharge such as truck washing or discharge from a concrete batch plant operation). After one year of implementation, ORE in consultation with the regions will evaluate the criteria and the effectiveness of the ESO for storm water and make any changes that may be needed to ensure the continued usefulness of this program.

Regions may use ESOs for storm water upon providing a memorandum to ORE/Water Enforcement Division that they are committed to using the ESO as part of a complete storm water enforcement program that will encompass other administrative penalty cases and judicial referrals as appropriate. In addition, regions must commit that the ESO for storm water will complement, rather than substitute for other formal Section 402 enforcement. Finally, regions must also state that they will use the ESO as developed and that they will not revise or edit the documents, including the criteria determining which sites are eligible for ESOs, without obtaining prior approval by WED. ORE will review the regional ESOs to maintain the uniformity of the nationally-implemented criteria and penalty schedules.

ORE looks forward to working with the regions in exploring meaningful and effective opportunities to use the ESO for storm water. For specific questions, please contact Lauren V. Kabler in the Water Enforcement Division at (202) 564-4052.

Attachment(s)

¹ ESOs for sites over 50 acres will be considered by the Water Enforcement Division on a case-by-case basis provided that the ESO is part of a complete storm water enforcement program as detailed in the final framework.

EXPEDITED SETTLEMENT OFFER (“ESO”) for STORM WATER (Construction)

Scope

Storm water cases often involve facilities or sites where the cumulative effect of discharges can have significant environmental impact. In storm water cases, issuing timely and consistent enforcement actions to compel compliance is necessary to achieve the goal of deterrence. This can be achieved through issuing an expedited settlement offer (“ESO”) pursuant to the revisions to the “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*” (“*Consolidated Rules*”), 40 C.F.R. Part 22, particularly 40 C.F.R. § 22.13(b).¹ An ESO provides “real time” enforcement in situations where violations can be quickly corrected and a penalty collected within a short amount of time, generally a few months from EPA’s discovery of the violation.

The revisions to Part 22 provide a less resource-intensive mechanism for processing widespread violations associated with relatively small penalty amounts. Relatively limited penalty amounts are contemplated by this approach in keeping with the nature of the violations and the violator. The size of the penalty for each violation is important to the success of an expedited settlement program.

The purpose of expedited settlements is to supplement, not replace, the traditional administrative and judicial enforcement options. The program enables the regions to establish a credible and pervasive field presence. Traditional enforcement actions should be pursued for all violations where an expedited settlement is not adequate to address the level of non-compliance or the nature of the violator (*e.g.*, where there is a significant environmental harm, large economic benefit, repeat violator), or where the violator declines the offer for expedited settlement.

Regions may use ESOs for storm water upon providing a memorandum to ORE/Water Enforcement Division that they are committed to using the ESO as part of a complete storm water enforcement program that will encompass other administrative penalty cases and judicial referrals as appropriate. In addition, regions must commit that the ESO for storm water will complement, rather than substitute for other formal Section 402 enforcement. Finally, regions must also state that they will use the ESO as developed and that they will not revise or edit the documents, including the criteria determining which sites are eligible for ESOs, without obtaining prior approval by WED. ESOs for sites over fifty acres will be considered by WED on a case-by-case basis provided that the ESO is part of a complete storm water enforcement program as detailed in the final framework. The regions must seek WED approval if they wish to use the ESO at sites larger than fifty acres. ORE will review the regional ESOs to maintain the

¹The ESO is a settlement approach and the ESO worksheet is not intended , and should not be used as, the basis for a penalty demand in an administrative penalty hearing or a judicial trial. The ESO settlement penalty is not intended for use by EPA, defendants, respondents, courts, or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to use the ESO approach is purely within EPA's discretion.

uniformity of the nationally-implemented criteria and penalty schedules. After one year of implementation, ORE will evaluate the effectiveness of the ESO for storm water and make any changes that may be needed to ensure the continued usefulness of this tool.

Terminology

- A. The **Inspector Worksheet** is the *NPDES Industrial Storm Water Worksheet for Construction*. It is the worksheet that an inspector uses in the field when conducting an inspection - each block cross-references the applicable ESO element(s) allowing an inspector to quickly and easily transfer inspection findings to ESO Worksheet and calculate a proposed penalty.²
- B. The **ESO Worksheet** is the *Expedited Settlement Offer Worksheet - Findings and Alleged Violations*. It is the worksheet that an inspector uses to calculate a proposed or recommended penalty for the site based on the inspector's findings - it will be incorporated by reference into the ESO Settlement Agreement.
- C. The **ESO Agreement** is the *Expedited Stormwater Settlement Agreement*. It is a combined "Complaint" and "Consent Agreement and Final Order."
- D. The **ESO Criteria**, as follows, controls which sites are ESO-eligible. Sites which meet all of the following criteria can be ESO-eligible: (1) construction sites up to fifty acres; (2) sites where the penalty calculated via the ESO worksheet is no more than \$15,000; (3) sites where there is no evidence of significant environmental impact (*e.g.*, turbidity observed in receiving water); (4) sites where the operator is a first-time violator³; and (5) sites where there is no evidence of non-allowable storm water discharges (*e.g.*, process wastewater discharge, such as truck washing or discharge from a concrete batch plant operation).

Procedure

- 1. Inspector conducts a storm water inspection using the Inspector Worksheet for Construction.
- 2. The inspector consults the ESO Criteria to determine whether the site is ESO-eligible.
- 3. If the inspector determines that the site is ESO-eligible, the inspector transfers the findings to the ESO Worksheet and calculates a proposed penalty.

²Use of this form is not mandatory - it is merely provided as a tool to for the inspector.

³"Violator" refers to any operator who has been issued a formal enforcement action, or APO, by either EPA or a state for violation of either the MSGP or the CGP.

- 4.a. The inspector leaves the ESO Worksheet (proposed penalty) in the field with the site representative; or,⁴
- 4.b. The inspector does not leave the ESO Worksheet in the field with the site representative. Some regions may require that the ESO Worksheet undergo supervisor review and approval before it is delivered to a site representative.
5. A supervisor reviews the Inspector Worksheet and ESO Worksheet and either approves or does not approve the proposed penalty. If the penalty is approved, the ESO Agreement, along with attached instruction sheet, and ESO worksheet are mailed to the site representative within seven business days of the inspection.⁵
6. The site representative is given thirty days to return a signed ESO Agreement accompanied by a check. The check will be deposited in an interest-bearing escrow account.⁶ If the signed ESO Agreement is not received within thirty days the ESO is automatically withdrawn. If the offer is withdrawn the region should be prepared to escalate enforcement response by commencing an administrative enforcement proceeding under 40 C.F.R. Part 22.
7. The region provides for a thirty day public notice of ESO Agreement. Some regions may choose to public notice the ESO Agreement concurrent with the thirty days the violator has to correct the violation and sign the ESO Agreement. Other regions may choose to public notice the ESO Agreement after it has been signed by the violator and returned to EPA.
8. Regions are required to consider any public comments received regarding the ESO in order to determine, after reviewing the comments, whether the ESO is in the public interest. If a region determines, after a mandatory ten day period following the close of the comment period, that the ESO is in the public interest, the Appropriate Official at a region (*e.g.*, an approving neutral, like a Regional Judicial Officer) will sign the Agreement. Regions will file the signed ESO Agreement with a Hearing Clerk, mail the original back to the site representative and mail a copy to any commenters informing them of their right to file with the Regional Administrator a petition to set aside the ESO pursuant to §309(g)(4)(C) of the Act, 33 U.S.C. §1319(g)(4)(C) and Part 22. The ESO is

⁴The inspector must clearly explain to the site representative that the penalty left in the field by the inspector is a proposed penalty and that it is not an official offer by EPA to settle the government's civil penalty claims against the respondent. A final offer will be mailed to the site recipient by EPA upon supervisor review and approval.

⁵Some regions may choose to send an administrative order at this time as well.

⁶Requesting check prior to public notice guards against collection actions, however, some regions may choose not to accept a check prior to public notice. If this is the case, a region may request that the check be mailed within thirty days of receiving the final signed ESO Agreement from the region.

effective thirty days after signature by the Appropriate Official, unless a petition to set aside the ESO Agreement is filed by a commenter.

NPDES Industrial Storm Water Worksheet (Construction)

National Database Information				General	
Inspection Type					
NPDES ID Number					
Inspection Date					
Inspector Type <i>(circle one)</i>	EPA	State	EPA Oversight		
Facility Type <i>(circle one)</i>	Commercial/ Industrial	Residential	Municipal		
Inspector Name					
Telephone					
Entry Time					
Exit Time					
Signature					

Facility Location Information					
Name/Location/ Mailing Address					
GPS Coordinates	Latitude		Longitude		
Receiving Water(s)					
Disturbed Area		Start Date		Stop Date	

Contact Information		
	Name(s)	Telephone
Name(s) and Role(s) of All Parties Meeting the Definition of Operator		
Facility Contact		
Authorized Official(s)		

Site Information: <i>(circle all that apply)</i>							
Nature of Project	Residential	Commercial/ Industrial	Roadway	Private	Federal	State/ Municipal	Other
Construction Stage	Clearing/ Grubbing	Rough Grading	Infrastructure	Building Const.	Final Grading	Final Stabilization	

Basic Permit Information		
Permit Coverage <i>ESO Element 3 & 4</i>	Y	N
Permit Type	General	Individual
Permit notice/sign visibly posted including: copy of NOI, contact name & phone number, location of SWPPP <i>ESO Element 41</i>	Y	N
NOI Date		
If applicable, is waiver certification & approval on file?	Y	N

Basic SWPPP Information		
SWPPP Prepared & Available <i>ESO Element 5 & 30</i>	Y	N
SWPPP Contents Satisfactory <i>ESO Elements 5 - 31</i>	Y	N
SWPPP Implementation Satisfactory <i>ESO Elements 32 - 48</i>	Y	N
SWPPP Date		
<i>Intentionally left blank</i>		

NPDES Industrial Storm Water Worksheet (Construction)

SWPPP Review <i>(can be completed in office)</i>			
<u>General</u>	Notes:		
Is there a SWPPP? <i>ESO Element 5</i>	Y	N	
SWPPP completed prior to NOI submission? <i>ESO Element 6</i>	Y	N	
Copy of permit language? <i>ESO Element 25</i>	Y	N	
Is SWPPP consistent with state/tribal/local regulations and permits? <i>ESO Element 26</i>	Y	N	
SWPPP updated to incorporate changes to State, Tribal, Local erosion plans? <i>ESO Element 27</i>	Y	N	
Have copies of inspection reports/all other documentation been retained as part of the SWPPP for 3 years from date permit coverage expires? <i>ESO Element 28</i>	Y	N	
Is a copy of the SWPPP on site or made available? <i>ESO Element 30</i>	Y	N	
Did all "operators" sign/certify the SWPPP? <i>ESO Element 31</i>	Y	N	
<u>Site Description</u>	Notes:		
SWPPP identifies potential sources of pollution? <i>ESO Element 7</i>	Y	N	
SWPPP identifies all operators and their areas of control? <i>ESO Element 8</i>	Y	N	
Is there a site description? <i>ESO Element 9</i>	Y	N	
Nature/sequence of construction activity? <i>ESO Element 9A - 9B</i>	Y	N	
Total area of site and total area to be disturbed? <i>ESO Element 9C</i>	Y	N	
Is there a general location map? <i>ESO Element 9D</i>	Y	N	
Is there a site map? <i>ESO Element 9E</i>	Y	N	

NPDES Industrial Storm Water Worksheet (Construction)

Site Description (cont'd)			Notes:
Drainage patterns/outfalls on site map? <i>ESO Element 9F</i>	Y	N	
Area of soil disturbance on site map? <i>ESO Element 9F</i>	Y	N	
Location of major structural controls on site map? <i>ESO Element 9F</i>	Y	N	
Location of storm water discharges to a surface water on site map? <i>ESO Element 9F</i>	Y	N	
Location of materials or equipment storage on site map (on-site or off-site)? <i>ESO Element 9F</i>	Y	N	
Location/description industrial activities? <i>ESO Element 9G</i>	Y	N	
Name of Receiving water(s) or MS4 listed?	Y	N	<i>Note: Indicate whether receiving water is 303(d) listed.</i>
Does the SWPPP include dates of major grading activities, temporary/permanent construction cessation, and initiation of stabilization practices? <i>ESO Element 14</i>	Y	N	
Endangered Species Documentation? <i>ESO Element 23</i>	Y	N	
Controls to Reduce Pollutants			Notes:
Does the SWPPP include a description of all pollution control measures (BMPs) that will be implemented to control pollutants in storm water discharges, including sequence and which operator responsible for implementation? <i>ESO Element 10 A - C</i>	Y	N	
Does the SWPPP include a description of interim and permanent <i>stabilization practices</i> (e.g., seeding, mulching, riprap for the site)? <i>ESO Element 11; 12</i>	Y	N	

NPDES Industrial Storm Water Worksheet (Construction)

Controls to Reduce Pollutants (cont'd)			Notes:
Does the SWPPP identify the contractor(s) and timing by which <i>stabilization practices</i> will be implemented? <i>ESO Element 13</i>	Y	N	
Does the SWPPP include a description of <i>structural practices</i> (e.g., vehicle track-out, silt fences, sediment traps, storm drain inlet protection) for the site? <i>ESO Element 15</i>	Y	N	
Does the SWPPP identify the contractor(s) and timing by which <i>structural practices</i> will be implemented? <i>ESO Element 10B - 10C</i>	Y	N	
Does the SWPPP identify storm water management measures to address storm water runoff once the construction is completed (e.g., retention ponds, velocity dissipation controls)? <i>ESO Element 16</i>	Y	N	
Does SWPPP describe measures to prevent discharge of dredge/fill materials to waters of the U.S.? Does site have 404 permit? <i>ESO Element 17</i>	Y	N	
Does SWPPP describe measures to minimize off-site vehicle tracking and generation of dust? <i>ESO Element 18</i>	Y	N	
Does SWPPP describe controls for pollutants from storage of construction or waste materials? <i>ESO Element 19</i>	Y	N	
Does the SWPPP describe controls for pollutants from non-construction activities? <i>ESO Element 20</i>	Y	N	
Does SWPPP identify allowable non-storm water discharges? <i>ESO Element 21</i>	Y	N	
Does SWPPP ensure implementation of pollution prevention measures for non-storm water discharges? <i>ESO Element 22</i>	Y	N	
Is SWPPP revised when BMPs added/modified within 7 days after inspection reveals problems? <i>ESO Element 29</i>	Y	N	

NPDES Industrial Storm Water Worksheet (Construction)

Inspections		Notes:	
Inspections performed once every 7 days, or every 14 days within 24 hours of a rain event greater 0.5"? <i>ESO Element 32</i>	Y	N	
Inspections performed by qualified personnel? <i>ESO Element 33</i>	Y	N	
All disturbed areas and/or used for storage and exposed to rain inspected? <i>ESO Element 34</i>	Y	N	
All pollution control measures inspected to ensure proper operation? <i>ESO Element 35</i>	Y	N	
All discharge locations inspected if accessible, or if not accessible, are nearby downstream locations inspected? <i>ESO Element 36; 37</i>	Y	N	
Entrance/exit inspected for off-site tracking? <i>ESO Element 38</i>	Y	N	
Inspection report contain all required items and certified? <i>ESO Element 39; 40</i>	Y	N	
Notes on SWPPP Review			
Site Description:			

NPDES Industrial Storm Water Worksheet (Construction)

SWPPP Implementation <i>(complete in field)</i>	
<u>Stabilization Practices</u>	
<p>List and describe stabilization practices <i>ESO Element 43, 48</i></p>	<p><i>(e.g., seeding, mulching, geotextiles, sod stabilization)</i></p>
<p>Are stabilization measures initiated no more than 14 days after temporary or permanent construction cessation? <i>ESO Element 46</i></p>	<p><i>(e.g., indicate "yes" or "no"; if "yes", how long without stabilization measures?)</i></p>

NPDES Industrial Storm Water Worksheet (Construction)

<u>Structural Practices</u>	
List and describe structural controls <i>ESO Element 42, 43, 47</i>	<i>(e.g., silt fences, hay bales, storm drain inlet protection, sedimentation pond, rip rap, check dam, diversion structure, off-site vehicle track-out)</i>
<u>Non-Structural Practices</u>	
Street Cleaning <i>ESO Element 44</i>	<i>(e.g., describe measures taken to remove offsite accumulation of sediment)</i>
Good Housekeeping & Waste Disposal Practices <i>ESO Element 45</i>	<i>(e.g., describe measures taken to prevent litter and debris from becoming a pollutant source)</i>

NPDES Industrial Storm Water Worksheet (Construction)

Non-Structural Practices (cont'd)	
Equipment Wash/ Maintenance Area <i>ESO Elements 43</i>	<i>(provide brief description)</i>
Concrete Washout Areas <i>ESO Elements 43</i>	<i>(provide brief description)</i>
Miscellaneous	
Evidence of Sediment Deposition to Surface Waters <i>*ESO Eligibility - if "yes," site not eligible for ESO</i>	<i>(e.g., significant turbidity observed in a receiving water body)</i>
Pollution prevention measures for non- storm water discharges? <i>*ESO Eligibility - If evidence of non-allowable non-storm water discharges, site not eligible for ESO</i>	<i>(provide brief description and determine whether/if non-storm water discharges allowable)</i>

NPDES Industrial Storm Water Worksheet (Construction)

Miscellaneous (cont'd)

**Has implementation
of
additional/modified
BMPs been
completed before
next anticipated
storm event?**
ESO Element 43.C.1

(provide brief description)

Notes on SWPPP Implementation

NPDES Industrial Storm Water Worksheet (Construction)

Photograph Log

1.

*Insert additional rows as needed

[illegible]

	B Describe sequence for implementation	CGP 3.4.A	0	\$250.00	\$0.00
	C Detail operator(s) responsible for implementation	CGP 3.4.A	0	\$250.00	\$0.00
11	SWPPP does not describe interim stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
12	SWPPP does not describe permanent stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
13	SWPPP does not describe a schedule to implement stabilization practices	CGP 3.4.B	0	\$250.00	\$0.00
14	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 14 as 1 violation)	CGP 3.4.C.1-3	0	\$250.00	\$0.00
15	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	CGP 3.4.D	0	\$500.00	\$0.00
16	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed	CGP 3.4.E	0	\$500.00	\$0.00
17	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit	CGP 3.4.F	0	\$500.00	\$0.00
18	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	CGP 3.4.G	0	\$500.00	\$0.00
19	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials	CGP 3.4.H	0	\$250.00	\$0.00
20	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials	CGP 3.4.I	0	\$500.00	\$0.00
21	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP	CGP 3.5	0	\$500.00	\$0.00
22	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	CGP 3.5	0	\$500.00	\$0.00
23	Endangered Species Act documentation is not in SWPPP	CGP 3.7	0	\$500.00	\$0.00
24	Historic Properties (Reserved)	CGP 1.3.C.7			
25	Copy of permit and/or NOI not in SWPPP (count each omission under 25 as 1 violation)	CGP 3.8	0	\$250.00	\$0.00
26	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)	CGP 3.9	0	\$750.00	\$0.00
27	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	CGP 3.9	0	\$250.00	\$0.00
28	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates	CGP 3.10.G	0	\$500.00	\$0.00
29	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under 29 as 1 violation)	CGP 3.11.C	0	\$50.00	\$0.00
30	Copy of SWPPP not retained on site	CGP 3.12.A	0	\$500.00	\$0.00
A	SWPPP not made available upon request	CGP 3.12.C	0	\$500.00	\$0.00
31	SWPPP not signed/certified	CGP 3.12.D	0	\$500.00	\$0.00
32	Inspections not performed either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas)	CGP 3.10.A, 3.10.B	0	\$75.00	\$0.00
33	Inspections not conducted by qualified personnel	CGP 3.10.D	0	\$500.00	\$0.00
34	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	CGP 3.10.E.	0	\$50.00	\$0.00
35	All pollution control measures not inspected to ensure proper operation	CGP 3.10.E.	0	\$500.00	\$0.00
36	Discharge locations are not observed and inspected	CGP 3.10.E.	0	\$50.00	\$0.00
37	For discharge locations that are not accessible, nearby locations are not inspected	CGP 3.10.E.	0	\$50.00	\$0.00

38	Entrance/exit not inspected for off-site tracking	CGP 3.10.E.	0	\$500.00	\$0.00
39	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 39 as 1 violation)	CGP 3.10.G	0	\$50.00	\$0.00
40	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)	CGP 3.10.G	0	\$50.00	\$0.00
41	Sign/notice not posted	CGP 3.12.B	0	\$250.00	\$0.00
	A Does not contain copy of complete NOI	CGP 3.12.B	0	\$50.00	\$0.00
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign	CGP 3.12.B	0	\$50.00	\$0.00
42	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water	CGP 3.13.F	0	\$500.00	\$0.00
43	Control measures are not properly:				
	A Selected	CGP 3.13.A	0	\$500.00	\$0.00
	B Installed	CGP 3.13.A	0	\$500.00	\$0.00
	C Maintained	CGP 3.13.A	0	\$500.00	\$0.00
	1. Maintenance not performed prior to next anticipated storm event (count each failure of operator to properly select, install, or maintain each BMP as 1 violation)	CGP 3.6.B	0	\$250.00	\$0.00
44	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	CGP 3.13.B	0	\$500.00	\$0.00
45	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)	CGP 3.13.C	0	\$500.00	\$0.00
46	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation	CGP 3.13.D	0	\$500.00	\$0.00
	*Exceptions:				
	(a) Snow or frozen ground conditions	CGP 3.13.D.1			
	(b) Activities will be resumed within 14 days	CGP 3.13.D.2			
	(c) Arid or Semi-arid areas (<20 inches per year)	CGP 3.13.D.3			
47	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained	CGP 3.13.E.1	0	\$1,000.00	\$0.00
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries	CGP 3.13.E.2	0	\$1,000.00	\$0.00
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more	CGP 3.6.C	0	\$500.00	\$0.00
48	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 47 above)	CGP 3.13.E.3	0	\$500.00	\$0.00
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more	CGP 3.6.C	0	\$500.00	\$0.00
Total Expedited Settlement:					\$0.00



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region, Address]

EXPEDITED STORM WATER SETTLEMENT AGREEMENT

Docket Number: CWA-_____-_____, NPDES No. _____

(herein the "Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is a "Findings and Alleged Violations Form" (herein the "Form"), which is hereby incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent has committed the violation(s) set forth in the Form.

Respondent had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1311, and/or failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations and any "person" who "discharges pollutants" from a "point source" to "waters of the United States" Respondent neither admits nor denies the allegation(s) specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("CAFO") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 CFR § 22.13(b). The parties enter into this CAFO in order to settle the civil violation(s) specified in the Form for a penalty of \$_____. Respondent consents to the assessment of this penalty, and waives the right to contest the allegation(s) specified in the Form, and waives the right to appeal.

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program. [Respondent also certifies that it has sent a bank, cashiers or certified check for the amount specified above, payable to the "Treasurer, United States of America"] OR [Within ten (10) days of the effective date of this CAFO Respondent shall submit a bank, cashiers or certified check for the amount specified above payable to the "Treasurer, United States of America"] to:

**U.S. EPA, Region [Insert Region here]
In the Matter of: [Insert Case Name here]
Docket No.: [Insert Docket Number here]
P.O Box [Insert Box Number]
Pittsburgh, PA 15251**

Respondent shall write the docket number of this case on the penalty payment check. This CAFO, along with a

photocopy of your check, is to be returned to the address at the top of this document.

This CAFO settles EPA's civil penalty claims against Respondent for the CWA violation(s) described in the Form. However, EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation, and does not waive its right to issue a compliance order for the violation(s) described in the Form. EPA has determined this CAFO to be in the public interest, and Respondent agrees.

This CAFO is binding on the parties signing below and effective thirty (30) days from the date it is signed by the **[Appropriate Official]** unless a petition to set aside the Order is filed by a commenter pursuant to §309(g)(4)(C) of the Act, 33 U.S.C. §1319(g)(4)(C) and Part 22. If Respondent does not sign and return this CAFO as presented within 30 days of the date of its receipt, the proposed CAFO is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violation(s) identified in the Form.

APPROVED BY EPA:

_____ Date: _____

[Complainant]

[Title]

APPROVED BY RESPONDENT in accordance with 40 CFR §122.22:

Name (print): _____

Title (print): _____

Signature: _____

Having determined that this CAFO is authorized by law and is in the public interest,

IT IS SO ORDERED:

_____ Date _____

[Appropriate Official]

[Title]

EXPEDITED STORM WATER SETTLEMENT INSTRUCTIONS & AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION [] _____

INSTRUCTIONS

The United States Environmental Protection Agency (EPA) has authority under Section 309 of the Clean Water Act to pursue civil penalties for violations of the storm water regulations. EPA encourages the expedited settlement of certain easily verifiable violations of storm water requirements, such as the violations cited in the Expedited Settlement Agreement for which these instructions are provided.

You may resolve the cited violations quickly by signing and returning the original Expedited Settlement Agreement and paying the penalty amount within 30 days of your receipt of the Expedited Settlement Agreement. As a condition of the settlement, you must also correct the violations within 30 days of your receipt of the Expedited Settlement Agreement. After a 30 day public comment period and once fully executed by EPA the Expedited Settlement Agreement is binding on EPA and the owner or operator. Upon signing and returning of the Expedited Settlement Agreement and a check for the amount of the penalty, copies of which should be retained by you, this will resolve these civil penalty claims for these violations. EPA will not accept or approve any Expedited Settlement Agreement returned more than 30 days after the date of your receipt of the settlement agreement.

If you do not sign and return the Expedited Settlement Agreement with payment of the penalty amount within 30 days of your receipt of the Expedited Settlement Agreement the Expedited Settlement Agreement will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the above or any other violations. Failure to return the Expedited Settlement Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correcting the violations that have been specifically identified in the Expedited Settlement Offer Worksheet Findings and Alleged Violations form. If you decide not to sign and return the Expedited Settlement Agreement and pay the penalty, EPA may pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to a maximum penalty of \$27,500 per day per violation.

You are required in the Expedited Settlement Agreement to certify that you have corrected the violations and paid the penalty amount. The payment for the penalty amount **must** be in the form of a bank, cashiers or certified check payable to the "Treasurer, United States of America" with **EPA and the Docket Number of the Expedited Settlement Agreement written on the check**. The Docket Number is located at the top of the Expedited Settlement Agreement.

The **original, signed, Expedited Settlement Agreement** and a **copy of the check payment** of the penalty amount **must** be sent via **CERTIFIED MAIL** to the address listed at the top of the Expedited Settlement Agreement. The original **check payment** of the penalty amount **must** be sent to the address listed in the lower left hand column of the Expedited Settlement Agreement.

By the terms of the Expedited Settlement Agreement, you waive your opportunity for a hearing pursuant to Section 309 of the Clean Water Act. EPA will treat any response to the proposed Expedited Settlement Agreement, other than acceptance of the settlement offer, as an indication that the recipient is not interested in pursuing this expedited settlement procedure.

If you have any questions, you may contact EPA Region [Region] at [phone number].